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Appl. No. : 10/067,185 Confirmation No. 5257
Applicant : Thomas D. Johnson
Filed : February 1, 2002
TG/A.U. : 1651
Examiner : Leon B. Lankford
Docket No. : 02-0201-JOHN
Customer No. : 26357

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Robert M. Hunter

42,679

Appl. No. 10/067,185

Related to Office action of December 16, 2003

NOTIFICATION OF INCOMPLETE OFFICE ACTION

Pursuant to MPEP 710.06, applicant hereby respectfully calls to the attention of the Office that the Office action mailed on 12/16/03 is incomplete because it does not specify which claims are considered by the Examiner to be linking claims. MPEP 809.03 requires that "Where linking claims exist, a letter including a restriction requirement . . . will be effected, specifying which claims are considered to be linking."

The applicant has proposed that claims 7, 8, 13-19, 29-32, 40-44 are linking claims. These claims link the claims in Group I to those in Groups II, IV, V, VI, VIII and IX. Groups II and IV include claims to compositions and, as such are not covered by the guidance in 1184 O.G. 86. MPEP 809.04 requires that "If a linking claim is allowed, the examiner must thereafter examine species if the linking claim is generic thereto, or he or she must examine the claims to the nonelected inventions that are linked to the elected invention by such allowed linking claim."

Without a statement in the record that the Examiner agrees that claims 7, 8, 13-19, 29-32, 40-44 are linking claims, applicant cannot be assured that the claims of the linked groups will be examined if a linking claim is allowed. Furthermore, MPEP 808 requires that "The linking

claims must be examined with the invention elected, and should any linking claim be allowed, the restriction requirement must be withdrawn." Unless the Examiner plans to issue more than two Office actions, the findings of the examination of the linking claims should have been presented in the first Office action.

The Office action mailed on 12/16/03 does not state in which group or groups new claims 40-44 have been placed. Claim 43 is to a composition and, as such, is not covered by the guidance in 1184 O.G. 86. The applicant needs to know in which group(s) these claims have been placed so that they can be assured that they are in groups containing claims that will be examined if the linking claims are allowed.

Claims 7, 13, 14, 16, 18 and 42 depend from Group I claim 1 and by such dependence contains all of the limitations of claim 1. Claim 8 depends from claim 7. Claims also depend from Group I claim 1. Claim 15 depends from claim 14. Claim 17 depends from claim 16. Claim 19 depends from claim 18. Claims 29 and 41 depends from Group I claim 23. Claims 30-32 depend from claim 29. Claim 40 depends from Group I claim 22.

Applicant understands that all the process claim



claim or include the limitations of a process claim will be rejoined and fully examined for patentability at the time of the allowance of the product claim, in accordance with the guidance in 1184 O.G. 86.

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A supplemental Office action stating in which group(s) claims 40-44 have been placed and which claims are linking claims, giving reasons for the allowance or rejection of at least the composition linking claims is, therefore, respectfully requested. In accordance with MPEP 710.06, applicant also hereby requests that the response period be reset because this notice is being filed within one month of the mailing date of the Office action containing the error.

Applicant respectfully requests that the supplemental Office action be mailed as soon as possible because it appears that a petition on the linking claims issue must be filed by 02/16/04, which is two months after the date of the Office action. Applicants understand that any petition related to the restriction requirement (which is another issue) can be delayed.



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